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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,123

02/06/2004

Peter W. Swart

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/774,123

Applicant(s)

SWART ET AL.

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 21, 2006 has been entered.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 9, 11, 12, 17 and 18 are rejected under 35

U.S.C. 102(b) as being anticipated by Brunelle '851.

The Brunelle '851 (Brunelle) reference discloses an air bath comprising: a basin 11 including bottom 12 and side walls 13,14,14'; a plurality of air jets 15,15'; an air manifold 18; a blower 20 including a controller 21'; and conduit 21, as claimed. Re claim 1, Brunelle teaches at least two rows (col. 5 lns. 16-22) spaced vertically (Figs. 3 and 5) from the basin bottom and extending around the basin (col. 4 lns. 42-49). Furthermore, the air jets are capable of functioning in the newly recited manner (in the same sense as with applicants' air jets).

Applicant argues at page 5 of the response filed June 21, 2006 "the novelty rejection based upon Brunelle is believed to be avoided." The examiner can not agree. The presence of even one jet in each of the side walls at the same elevation would define a "row". Brunelle discloses this subject matter as noted supra.

4. Claims 1-12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunelle, Castellote and applicants' admitted prior art.

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Re claims 1-8 and 10, the choice of jet arrangement (number/orientation of jets/rows, etc.) would appear an obvious choice to be made as taught by Castellote at paragraphs 0040 and 0056, for example. Applicant's acknowledge at page 5 of the response that the combination of Brunelle and Castellote is proper.

Applicant's argue at pages 5-6 of the response the combination of Brunelle and Castellote "would suggest an inferior jet arrangement". The examiner can not agree. Brunelle discloses a row(s) of jets extending around a basin to ensure full body air treatment (col. 2 lns. 47-55), and Castellote teaches air jets can be oriented in basin side walls as desired (par. 0040, 0056). Furthermore, applicant's admit at paragraph 0006 of the instant specification that rows of air jets in basin side walls exist in the prior art. In light of this evidence, it appears the prior art teaches the same jet arrangement as that disclosed by applicant's. Applicant's argue at pages 5-6 of the response the functional language added to claim 1 regarding the capability of an air jet to become blocked is "lacking from the prior art." The examiner can not agree as the structure recited in applicant's claims is fully taught by the "prior art" as discussed supra. Additionally, it is noted applicants' disclosed maximum vertical jet spacing of 5/8" (cl.

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4) would reflect a pressure differential of about 0.02 psi in a water-filled bath. This pressure differential would appear rather insignificant relative to the air pressure required to expel air into the bath.

5. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunelle, Castellote and applicants' admitted prior art as applied to claims 1 and 13 above, and further in view of Nicollet.

Although the air channels (18) of the Brunelle air bath do not include zones, as claimed, attention is directed to the Nicollet reference which discloses an analogous air bath which further includes air channels 31 that are zoned (col. 3 lns. 1-11). Therefore, in consideration of Nicollet, it would have been obvious to one of ordinary skill in the air bath art to associate zones with the Brunelle air channels in order to facilitate body treatment.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

6. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

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7. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', is positioned above the printed name.

Robert M. Fetsuga  
Primary Examiner  
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